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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Revision of Part 2 of the Commission's Rules Relating to the Marketing and Authorization of Radio Frequency Devices	)	ET Docket No. 94-45 RM-8125

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Petition for Reconsideration and Clarification

Ericsson Inc. ("Ericsson"), by its attorney and pursuant to the provisions of Section 1.106 of the Commission's rules, hereby submits its Petition for Reconsideration and Clarification ("Petition") of the *Report and Order* in ET Docket No. 94-45 ("Report and Order").[1] In support of its Petition, Ericsson states as follows:

Ericsson requests that the Commission reconsider and clarify two aspects of its decision in the above-captioned proceeding. Specifically, Ericsson requests reconsideration of the Commission's addition of Section 2.803(h) which continues to impose quantity limits on RF equipment which can be imported for testing and evaluation or demonstration at trade shows. Ericsson also requests that the Commission clarify Section 2.803(e)(7) so it is clear that manufacturers are allowed to operate equipment pursuant to Section 2.803(e)(1) through (e)(5) without obtaining a station license therefor.

[1] *In the Matter of Revision of Part 2 of the Commission's Rules Relating to the Marketing and Authorization of Radio Frequency Devices*, Report and Order, ET Docket No. 94-45, FCC 97-31, __ FCC Rcd __ (released February 12, 1997).

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Importation Rules

In comments submitted in the NPRM in this proceeding, some parties requested that the Commission eliminate restrictions which limit the number of RF devices that can be imported into the U.S. for testing and evaluation or demonstration at trade shows without the equipment having received the appropriate equipment authorization. The underlying rationale for the request was that such action would be consistent with the liberalized RF marketing rules proposed in the NPRM. Furthermore, eliminating the quantity restrictions would ensure that there was no unreasonable FCC discrimination against imported RF equipment which could be viewed as a barrier to trade.

Rather than adopting the requested changes, the Commission adopted a new Section 2.803(h) which expressly states that the importation limitations of Subpart K of Part 2 of the Commission's rules[2] are not changed as a result of the liberalized RF marketing rules. The sole reason for the denial was stated as follows:

> Such a change would permit the importation of an unlimited number of products that have not been tested to demonstrate compliance with the standards or have not been authorized under the appropriate equipment authorization procedure. If such products were later found to be non-compliant with the standards, it might be impossible to recover them, with the result that significant interference problems could develop for other radio operations.[3]

Ericsson does not dispute the fact that RF devices which do not comply with the Commission's technical standards can cause interference. Ericsson agrees that the Commission has an obligation to ensure that interference, especially from non-compliant

[2] Sections 2.1204(a)(3) and (a)(4) of Subpart K limit the number of RF devices that can be imported for testing and evaluation and demonstration at trade shows.

[3] *Report and Order,* para. 32.

devices, does not occur. Ericsson does, however, dispute the implication in the Commission's conclusion that imported RF devices are more often non-compliant with FCC technical standards and are more prone to causing interference than domestically produced RF equipment.[4]

Section 2.803(e) of the Commission's rules was specifically crafted to provide all manufacturers (domestic and foreign) with greater flexibility to "test and evaluate" and "demonstrate" RF devices prior to receiving an equipment authorization in order to allow manufacturers to promote their products in a more competitive and technologically advancing marketplace. To balance the goal of affording manufacturers with more flexibility with its obligation to control the potential for interference that may result from the adoption of the new rules, the FCC promulgated Section 2.803(e)(9). Section 2.803(e)(9) imposes the following conditions on manufacturers who operate under Section 2.803(e): (1) RF devices which are tested, evaluated and operated without equipment authorization have no cognizable right to continued use; (2) operation is subject to the condition that no harmful interference is caused and any that is received shall be accepted; and, (3) operation of the device shall cease upon notice by the Commission that interference is being caused. In addition, Section 2.803(g) provides that the more liberal RF marketing and operational rules apply only to devices designed to comply with appropriate technical standards.

The foregoing restrictions on a manufacturer's authority to engage in more liberal pre-grant marketing and operation are, for the most part, warranted. Notwithstanding the

[4] No other conclusion can be drawn since there is no limit on the number of RF devices which domestic manufacturers can test and evaluate or demonstrate at trade shows.

foregoing, the restrictions are wholly-irrelevant to whether the RF equipment in question is manufactured domestically or abroad. As noted above, the Commission's rationale for promulgating the Section 2.803(h) importation restriction is based on two premises. First, imported RF equipment may not be in compliance with appropriate standards and can cause interference. Second, imported RF equipment could be hard to recall to eliminate interference, if and when necessary.

The Commission has not provided one scintilla of evidence, nor was any submitted in this proceeding, which proves that imported RF equipment is more likely than domestic RF equipment to fail to comply with appropriate technical standards. Neither has there been any record evidence adduced in this proceeding to show that non-compliant imported RF devices are more difficult to trace, locate and recover than domestically manufactured RF devices. In fact, since imported RF devices have to clear customs regardless of FCC rules, there is a paper trail associated with imported RF devices which provides regulators with the name and address of a party responsible for the importation. Imported RF devices are therefore arguably easier to track and locate than domestically produced RF devices which have no such paper trail.

Ericsson submits that since there has been no proof that imported RF devices are more likely to cause problems than domestically produced RF devices and since there has been no proof that imported RF devices are more difficult to trace than domestically manufactured RF devices, Section 2.803(h) should be eliminated in its entirety. Furthermore, for purposes of consistency the FCC should also eliminate Sections

2.1204(a)(3) and (a)(4) of Subpart K of Part 2 since no useful purpose is served by maintaining those rules.

Elimination of Sections 2.803(h) and 2.1204(a)(3) and (a)(4) is consistent with the principals of, and actions taken in, the *Report and Order*. In the *Report and Order* the Commission affirmatively rejected the request of those parties that would have imposed a numerical limit on the number of RF devices which could be operated prior to authorization:

> The Commission does not believe that the additional restrictions suggested by some commenting parties are necessary, including certification that on-site testing is the only feasible means of determining compliance ***or limits on the number of products that can be operated prior to authorization***.[5]

Since the Commission has not justified its conclusion that imported RF equipment is any more likely to cause interference than domestically produced equipment, and since it has rejected requests to limit the number of domestic RF devices that can be operated prior to authorization, it must, treat imported RF equipment the same. The Commission must avoid unlawful discrimination which can be viewed as a barrier to trade and, on reconsideration, eliminate Section 2.803(h) and conform Sections 2.1204(a)(3) and (a)(4) accordingly.

In rejecting the request to eliminate the importation restrictions, the Commission stated that "these importation limits, combined with the relaxation of the marketing rules, will still provide foreign manufacturers with sufficient flexibility to display and promote their products."[6] This unsupported conclusion begs the question that was argued and is

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[5] *Report and Order*, para. 19 (emphasis supplied).
[6] *Report and Order*, para. 32.

erroneous. Manufacturers, especially in today's competitive marketplace, are being requested by numerous licensees and prospective operators who have won licenses in auctions, to demonstrate products. Limitations on a manufacturer's ability to import an unlimited number of devices for product demonstration at customer locations or trade shows unfairly restricts the ability of foreign manufacturers to compete with domestic manufacturers. Simply put, the limitations may require a foreign manufacturer to advise a prospective customer that it can not provide the equipment for a demonstration due to rules that apply to it and not to domestically manufactured equipment. In today's fast paced telecommunications environment, that is not an acceptable response to a customer who needs to make rapid equipment decisions to deploy product at the earliest possible time.

If the Commission chooses not to eliminate Sections 2.803(h), 2.1204(a)(3) and 2.1204(a)(4), it should reconsider its decision by exempting certain categories of imported RF equipment from the quantity restrictions described herein. As noted above, Ericsson supports the Commission's efforts to ensure that all appropriate and reasonable actions are taken to avoid interference caused by imported and domestically manufactured RF devices which operate under the new RF marketing rules. However, rather than adopting overbroad rules which unreasonably and unfairly discriminate against imported RF equipment, the Commission should adopt rules designed to cure the ills sought to be avoided. There are broad categories of imported RF equipment which can be exempted from the quantity limitations of the rules since there is little likelihood that interference from such devices will occur. For example, Ericsson submits that base station

transceivers as well as portable/mobile devices used in CMRS and PMRS services should be exempt from the importation restrictions for a number of reasons. First, these devices have an excellent record of compliance with technical standards. Second, these devices are generally manufactured by companies that take the Commission's rules very seriously. Third, the devices can be traced to a responsible party very easily.[7]

Clarification of Section 2.803(e)(7)

Sections 2.803(e)(1) through (5) allow RF devices to be operated under certain circumscribed conditions, including at trade shows, business locations and similar non-consumer venues. These rules will assist manufacturers in developing products more quickly in a fast-paced market which will ultimately inure to the benefit of the public. Despite the fact that pre-grant operation is allowed under certain circumstances, Section 2.803(e)(7) provides that Section 2.803 is not intended to eliminate the requirement that "station licenses" be obtained for products that normally require a license to operate.

Manufacturers have historically obtained STAs and/or experimental licenses in licensed radio bands to test and/or demonstrate non-approved RF equipment on a limited basis at trade shows and other locations. As written, Section 2.803(e)(7) could be interpreted to require manufacturers to continue to obtain STAs and/or experimental licenses before operating equipment in accordance with the provisions of Section 2.803(e)(1) through (5). Because this interpretation would maintain the *status quo* with respect to pre-grant operational authority for manufacturers, most of whom are not service providers, the rules as presently written would negate the very benefits they were

[7] The CMRS and PMRS RF devices described above can be distinguished from other "consumer" RF devices with which the FCC may have additional concerns and for which the FCC did not provide pre-grant operational authority.

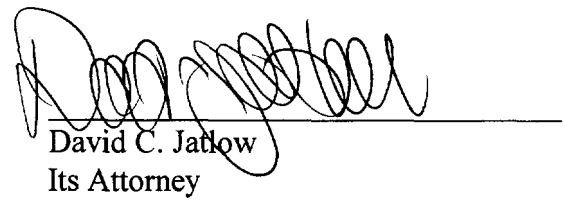
intended to provide for the manufacturing community. Accordingly, clarification of this rule is necessary.

Ericsson specifically requests that the Commission clarify that the requirement to obtain a "station license for any product that normally requires a license to operate" is applicable only to entities that intend to provide services using the product rather than to entities like manufacturers who only intend to demonstrate equipment at trade shows and at venues otherwise permitted under Section 2.803(e). Stated another way, the FCC should clarify that Section 2.803(e)(7) is not intended to allow an operator (such as one for example that would provide Part 22, 24 or 90 services) to use Section 2.803(e)(7) to deploy non-approved RF equipment throughout its system without obtaining a license to provide the service.

Clarification as requested above, will serve to ensure that the new marketing/pre-grant operational rules allow manufacturers to demonstrate products without undue regulatory burdens.

Respectfully submitted,

Ericsson Inc.



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